



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2004

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
1400 South Lamar Street, #300A  
Dallas, Texas 75215-1801

OR2004-6664

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206731.

The City of Dallas (the "city") received three requests for a copy of a memorandum sent to Dallas Police Department (the "department") supervisors regarding their thoughts about any changes or problems within the department, as well as the supervisors' responses. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is subject to section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136.<sup>1</sup> The city must, therefore, withhold the information we have marked under section 552.136.<sup>2</sup> You also claim that some of the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(b)(1) excepts from disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions like section 552.136 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup> Because we reach this conclusion under section 552.136, we need not address your argument against disclosure of this information under section 552.101.

information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution).

You state that the submitted documentation includes officers' cellular telephone numbers and pager numbers used in the field to carry out their law enforcement responsibilities. You further claim that release of this information would interfere with law enforcement because it would interfere with the ability of the officers to perform their job duties. Having reviewed your arguments and the submitted information, we agree that release of the telephone and pager numbers would interfere with law enforcement or crime prevention. Accordingly, the city may withhold this information under section 552.108(b)(1) of the Government Code.

We next address your claim that some of the submitted information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the personal information marked within the submitted documentation under section 552.117(a)(2).

Lastly, we address your claim under section 552.137. As amended by the 78<sup>th</sup> Legislature, this section provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

- (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
  - (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
  - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.
- (d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137(a) is applicable to certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137(a) is not applicable to the types of e-mail addresses listed in section 552.137(c) or to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Therefore, the city must withhold as confidential under section 552.137 the marked e-mail addresses found in the submitted documentation, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

In summary, the city must withhold the information we have marked under section 552.136; the city may withhold the officers' cellular telephone numbers and pager numbers under section 552.108(b)(1); the city must withhold the marked personal information under section 552.117; the city must withhold as confidential under section 552.137 the marked e-mail addresses, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure; and the city must release all remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Barenblat", with a long horizontal flourish extending to the right.

Marc A. Barenblat  
Assistant Attorney General  
Open Records Division

MAB/krl

Ref: ID# 206731

Enc. Submitted documents

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